

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

BAYWOOD RLTY & CONSTR,)
CORP.,)
)
Plaintiff,)
)
)
vs.) Case No. 4:17-CV-00022
)
NORTH SHORE COMMERCIAL DOOR) State Cause No. 1611-CC01008
CO. d/b/a NORTH SHORE DOOR CO.)
INC. d/b/a NORTH SHORE RESIDENTIAL)
DOOR COMPANY, INC. d/b/a NORTH)
SHORE RESIDENTIAL DOOR d/b/a)
NORTH SHORE COMMERCIAL DOOR)
COMPANY, INC.,)
)
and)
)
MATTHEW T. O'DONNELL,)
)
and)
)
JOHN DOES 1-10,)
)
Defendants.)

NOTICE OF REMOVAL

**TO: UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

COME NOW North Shore Residential Door Co. Inc.¹ ("North Shore") and Matthew T. O'Donnell ("O'Donnell") (collectively "Defendants") by and through their undersigned counsel, and hereby file their Notice of Removal from the Circuit Court of St. Charles County, Missouri

¹ Defendant North Shore denies that it does business under all the names listed in the caption of the Petition.

to the United States District Court for the Eastern District of Missouri. In support thereof, Defendants respectfully state to this Honorable Court as follows:

1. Defendants are named as parties in a civil action brought by Plaintiff Baywood Rlty & Constr Corp. (hereinafter “Plaintiff”) in the Circuit Court of St. Charles County, Missouri entitled Baywood Rlty & Constr Corp. v. North Shore Commercial Door Co. d/b/a North Shore Door Co., Inc. d/b/a North Shore Residential Door Company, Inc. d/b/a North Shore Residential Door d/b/a North Shore Commercial Door Company, Inc., Matthew T. O’Donnell and John Does 1-10, Case No. 1611-CC01008 (the “Lawsuit”).

2. The Lawsuit alleges, *inter alia*, that Defendants violated the Telephone Consumer Protection Act, (“TCPA”) 47 U.S.C. § 227 and the regulations promulgated thereunder. *See* Petition, pg. 2 & ¶¶ 18, 20, 21, 22, 23, 25, 33, 34, 35, 36, 37, 40, 42.

3. On December 9, 2016, a copy of the Summons to Matthew O’Donnell and Petition in the Lawsuit was served on Matthew O’Donnell in Elyria, Ohio.

4. On December 19, 2016, a copy of the Summons to North Shore Commercial Door Co. and Petition in the Lawsuit was served on Matthew O’Donnell in Elyria, Ohio.

5. Pursuant to Local Rule 2.03 and 28 U.S.C. 1446(a), a true and correct copy of all process, pleadings, and other documents currently on file in the Circuit Court of St. Charles, Missouri are attached hereto as **Exhibit A**.

6. Therefore, Notice of Removal is filed with this Court within thirty (30) days of receipt of the Petition by O’Donnell and North Shore as required by 28 U.S.C. § 1446(b).

Jurisdiction – Federal Question

7. A petition which asserts claims under the TCPA contains a federal question. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012); see also *St. Louis*

Heart Ctr., Inc. v. Vein Centers For Excellence, Inc., 860 F. Supp. 2d 920, 921 (E.D. Mo. 2012)

When a federal question is present on the face of the complaint, the district court has original jurisdiction and the action may be removed to federal court. *See Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392–93 (1987).

8. This case is therefore properly removed pursuant to 28 U.S.C. § 1441, which allows a party to remove to federal court any civil action over “which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States.”

Venue

9. Venue lies in this Court because Plaintiff’s action is pending in the Missouri Circuit Court, Eleventh Judicial Circuit, City of St. Louis, Missouri, which is within this district and division. 28 U.S.C. § 1441(a).

10. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal will be mailed to Plaintiff and a copy of this Notice of Removal will be filed with and noticed to the Clerk of the Circuit Court of the St. Charles County, Missouri.

WHEREFORE, Defendant submits this Notice of Removal of the action against it now pending in the Missouri Circuit Court, Eleventh Judicial Circuit, St. Charles County, Missouri, and respectfully request that this Court accept jurisdiction of this action.

Respectfully submitted,

McMAHON BERGER, P.C.

/s/ Bryan D. LeMoine

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on 6th day of January, 2017, the foregoing was served, via first class mail, postage prepaid, upon the following:

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/s/ Bryan D. LeMoine